SUPREME COURT OF APPEALS OF VIRGINIA.

VIRGINIA RY. & POWER CO. v. BOLTZ.*

March 21, 1918.

[95 S. E. 467.]

1. **Appeal and Error (§ 930 (1)*)—Verdict Based on Conflicting Evidence—Presumption.**—Verdict being for plaintiff, and evidence as to charges of negligence being conflicting, it will be assumed on appeal that defendant's negligence was established.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 611.]

2. **Appeal and Error (§ 933 (1)*)—Review—Motion to Set Aside Verdict.**—On appeal from a denial of motion to set aside verdict for plaintiff, plaintiff's evidence in so far as it is at all credible must be accepted.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 619.]

3. **Street Railroads (§ 117 (21)*)—Injury to Person on Track—Contributory Negligence.**—Where a woman of intelligence and activity, aware of the dangers of the situation, and with nothing to distract her attention, or hinder her prevision, walked upon a street railway track, not at a regular crossing, without taking adequate precaution for her safety, there can be no recovery as a matter of law.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 848.]

4. **Street Railroads (§ 98 (6)*)—Contributory Negligence—Final Test.**—While the duty to look and listen is not applied with strictness to travelers crossing street railways, the final test in every case is whether ordinarily prudent persons would have attempted to cross under the circumstances.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 846.]

5. **Street Railroads (§ 98 (1)*)—Use of Streets—Rights of Public.**—The public has an equal right with a street railway company to use the streets between crossings, subject to the superior right of way of the street cars, due to the fact that such cars must run on the tracks, and cannot observe the law of the road.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 840.]

(Additional Syllabus by Editor.)

6. **Street Railroads—Last Clear Chance—Evidence.**—In an action against a street railroad company for personal injuries sustained by a pedestrian struck by a street car while crossing the track, evidence held to show an accident resulting from concurrent negligence of plaintiff and defendant, to which the doctrine of last clear chance is inapplicable.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 846.]

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*Rehearing Denied.

*For other cases see same topic and KEY-NUMBER in all Key-numbered Digests and Indexes.

Error to Hustings Court of Richmond.

Action by Mrs. Anna Boltz against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

H. W. Anderson, Thos. P. Bryan, and *A. B. Guigon,* all of Richmond, for plaintiff in error.

O'Flaherty, Fulton & Byrd, of Richmond, for defendant in error.

KELLY, J. Mrs. Anna Boltz was struck and injured by a street car owned and operated by the Virginia Railway & Power Company. In an action against the company to recover damages for the injury, there was a verdict in her favor, upon which the court rendered the judgment under review. We will refer to the parties hereafter as plaintiff and defendant, in accordance with their respective positions in the lower court.

The accident occurred on Eighteenth street, north of Franklin, in the city of Richmond. Franklin street runs east and west, and Eighteenth street runs north and south. The defendant company operates a double track street car line on Eighteenth street. Mrs. Boltz had walked north from Main to Franklin on the east side of Eighteenth street, and had proceeded into Eighteenth street a short distance beyond the street crossing when she attempted to cross from the east to the west side of the latter street, and was struck by a car which came up behind her from the south, and which was running on the eastern track.

[1] The negligence charged in the declaration and relied upon as established by the evidence is that the car was being operated at a dangerous and unlawful rate of speed, that no sufficient lookout was maintained, and that no gong or bell was sounded, or other proper warning given. The evidence is in conflict as to these charges of negligence, and we must, therefore, under the rule applicable in this court, assume that the negligence of the defendant was established. The theory of the defendant, however, is that, conceding its negligence, the plaintiff was guilty of contributory and concurring negligence which bars her recovery.

[2] There are material differences between the accounts of the accident so far as the plaintiff's conduct is concerned, as given by witnesses for the plaintiff and defendant, respectively. According to the testimony of witnesses for the defendant, the plaintiff, after crossing Franklin street, proceeded north about midway between the sidewalk curb and the railway track until the car was nearly opposite her, when she suddenly turned to her left and stepped on the track. According to the account of the plaintiff's witnesses, however (which, so for as at all

credible, we must, of course, accept), when she had proceeded across Franklin until within two or three steps of the curb on the north side of that street, and before she turned into Eighteenth street, she looked and saw no car approaching. In view of the fact that the car is shown to have stopped at the south side of Franklin street, it must then have been within the block and, therefore, within the line of her vision; but be this as it may, it is not material, because the question before us is not whether her outlook at that point would have been due care, if she had then gone straight across Eighteenth street on the flagstone crossing at that point. Instead of doing this, she walked diagonally up the street and went upon the track at a point 27 feet north of the crossing. She had made the observation mentioned above before she had crossed Franklin, when she was, as she says, two or three steps off of the curb of the sidewalk on the north side of that street. The sidewalk is 10 feet, 11 inches wide. If she was two or three steps from the curb when she looked, and was 27 feet north of the flagstone crossing when she was struck, she necessarily walked more than 30 feet after she looked for the car and before she went on the track. She was an active, intelligent woman, perfectly familiar with the situation, and stated that she always looked for cars at that point. Her testimony shows that she knew it was incumbent upon her, as a matter of care and precaution, to look at this time before going on the track, and she testifies that immediately before she stepped on the track she looked a second time and saw no car; but this statement cannot possibly be true, and must be disregarded. N. & W. Ry. Co. *v.* Strickler, 118 Va. 153, 155, 86 S. E. 824. According to her own statement (she says she was in a hurry and walking fast), the collision with the car must have occurred almost simultaneously with her entrance upon the track. There was nothing to obstruct her view, and had she looked the second time, as claimed by her, she could not have failed to see the car. If she should seek to escape this conclusion by contending that one of her witnesses said the car was standing still on the south side of Franklin street when she was already between the rails, and that she was under no obligation to look that far back before entering the track, she destroys her claim that she hurried across, and thus convicts herself of remaining carelessly and unnecessarily upon the track when she knew there was danger.

[3] The case simply resolves itself into one in which a woman of intelligence and activity, aware of the danger of the situation, and with nothing to distract her attention or hinder her prevision, walked upon a street railway track, not at a regular crossing, but at a point 27 feet beyond the crossing, without

taking adequate precautions for her safety. In such a case, upon settled principles, there can be no recovery as a matter of law.

[4] We are not unmindful that the duty to look and listen is not applied with strictness to travelers crossing street railways, as it is with regard to crossing steam railroads, and that with respect to the former the general rule is that the failure to look and listen is not negligence per se, but this general rule is not inflexible, and the final test in every case is whether the court can say that the evidence furnishes no reasonable basis upon which to find that an ordinarily prudent person would have attempted to cross the track under the circumstances of the particular case.

"The look and listen rule is not applied with strictness to travelers crossing street railway tracks. But a person about to cross or go upon a street car track must use ordinary care in view of all the circumstances and surroundings. He must make reasonable use of his eyes and ears to note the approach of cars, and where there is nothing to obstruct his view or distract his attention and he goes upon the track immediately in front of a moving car he is guilty of negligence. He should look for approaching cars at a place and time when such looking will be effectual." 8 Thomp. on Neg. (White's Supp. 1914) § 1438.

"The general rule is that the failure of a traveler to look and listen before attempting to cross a street railway track is not negligence per se; but when the undisputed evidence establishes exceptional circumstances which so conclusively indicate negligence in failing to look or listen that there can be no reasonable basis for drawing a different conclusion, the question is one of law for the court. The duty to look and listen depends largely on the circumstances of each case." Id., § 1443.

"Where the traveler gives a careless look, and does not see or hear a car, he is in no better position than if he had not looked and listened at all." Id., § 1445.

In Glynn v. New York City Ry. Co., 110 N. Y. Supp. 837, the court said in a case arising out of a collision between a pedestrian and a street car:

"He was not at a crossing but in the middle of the block between 130th and 131st streets, when he was struck, and there was nothing to obstruct his view. While he had a right to cross at that point, defendant had a paramount right to the use of its tracks between intersecting streets, and it was incumbent on the plaintiff to prove that he exercised due diligence to discover the approach of the car. Barney *v.* Metropolitan St. R. Co., 94 App. Div. 388, 394, 395, 88 N. Y. Supp. 335; Thompson *v.* Buffalo Ry. Co., 145 N. Y. 196, 39 N. E. 709; Fenton *v.* Second Ave. R.

Co., 126 N. Y. 625, 26 N. E. 967. The mere fact that at the time plaintiff left the curb he thought he had time to cross did not relieve him of the obligation to look and see where the north-bound car then was. There was nothing to obstruct his view and by not looking at or in the direction of the approaching car after he left the curb he was guilty of contributory negligence as matter of law."

In 2 Elliott on Roads and Streets (3d Ed.) § 961, it is said:

"The grant of a right to use the streets of a city gives the company rights superior in some respects to those of persons riding or driving along the street, at least as between crossings. A street railway company must necessarily possess greater rights than those of the ordinary traveler, for, as is very evident, the cars of the company cannot give and take the road, but must move upon the track. It is therefore the duty of those traveling in the ordinary mode to leave the track in order that the movement of the cars may be unimpeded. It is held, almost without dissent, that to the cars of the company must be yielded the right of passage, and that horsemen and vehicles must leave the track when cars approach. But at street intersections or crossings their rights are said to be equal or reciprocal."

[5] Of course the public has an equal right with the street railway company to ride, drive, and walk upon the street between crossings, subject, however, to the superior right of way of the street cars, due to the fact that such cars must run on the tracks and cannot observe the law of the road.

The Virginia decisions are in accord with the general principles above announced and the authorities above cited. The cases of Bass *v.* N. & W. Ry. Co., 100 Va. 1, 40 S. E. 100, Richmond Traction Co *v.* Clarke, 101 Va. 382, 43 S. E. 618, and other cases of that type, emphasize the distinction between the rights of travelers in crossing street railroads and steam railroads, respectively, but in the result merely hold that under the facts of each of those cases the plaintiff was not guilty of contributory negligence as matter of law. That they did not intend to do more than this is clearly shown by subsequent cases decided by the same court and the same judges in which it was held that it was negligence as a matter of law under the facts of the particular case for the plaintiff to attempt to cross a street railway.

In Virginia Railway Co. *v.* Johnson, 114 Va. 479, 76 S. E. 916, this court said:

"We are of opinion that the record presents a case of concurring negligence. The motorman was negligent in failing to keep a proper lookout for travelers at the Leigh street crossing; and the plaintiff was likewise guilty of negligence in driving

upon the defendants's track without exercising such ordinary care for his own safety as the exigencies of the situation demanded. Each was visible to the other for a distance of 75 to 100 feet, and the accident was due to the concurrent negligence of both, which continued down to the moment of the impact. The plaintiff approached the street car track with which he was perfectly familiar and over which he well knew cars were constantly passing, without taking any adequate precautions for his protection. He carelessly drove into a place of known danger with slackened rein and without looking for an approaching car until the point of collision was reached, when looking was useless, the car instantly crashed into the front wheels of his vehicle. In such case, upon well-settled principles, there can be no recovery."

There was, as we think, no evidence at all upon which to apply the doctrine of the last clear chance, and the most that can be made of the case from the plaintiff's standpoint is that the accident resulted from a concurrence of her negligence with that of the defendant.

The motion to set aside the verdict ought to have been sustained. The judgment complained of will be reversed, and the cause remanded for a new trial to be had, if plaintiff shall be so advised, not in conflict with the views herein expressed.

Reversed.

Note.

The law of the road is not applicable to pedestrians, who mav cross or use a street at any point, and other users of the street are charged with the duty of exercising care to avoid injuring them. 37 Cyc. 273. Pedestrians may cross a street anywhere and are entitled to rely on the observance of the law of the road by travelers in vehicles. Foster *v.* Curtis, 213 Mass. 79, 90 N. E. 961; Ann. Cas. 1913E, 1116, and cases cited. Little Rock R., etc., Co. *v.* Sledge, 108 Ark. 95, 158 S. W. 1096, Ann. Cas. 1915B, 682. In Virginia Ry. & Power Co. *v.* Meyers, 117 Va. 409, 411, 84 S. E. 742, it is said: "This court has repeatedly held that the traveling public have the same right to use, travel upon and across the public streets that street car companies have."

A pedestrian must use reasonable care to avoid injuries while walking on a street railroad track in a public street but he is not required to abandon the track to escape injuries resulting from the carelessness of the company. Shea *v.* Potrero, etc., R. R. Co., 44 Cal. 414. See generally 36 Cyc. 1524-1526.

A street railroad company is only required to exercise ordinary care in operating its cars in public streets, but this means a high degree of care such as is commensurate with the danger and circumstances. Barston *v.* Capital Traction Co., 29 App. Cas. (D. C.) 362. The duty is of course greater at street crossings, and especially where traffic is dense. Garrett *v.* People's R. Co. (Del.), 64 Atl. 264; McLeland *v.* St. Louis Transit Co. (Mo. App.), 80 S. W. 30. The same is true where the view of the crossing is obstructed. Dungan

v. Wilmington City R. Co. (Del.), 58 Atl. 868. See generally 36 Cyc. 1472, 1473.

In the case of children a street railroad company is bound to exercise a high degree of watchfulness in operating its cars; greater caution and prudence is required than in the case of an adult. Danville R., etc., Co. *v.* Hodnett, 101 Va. 261, 365, 43 S. E. 606; Potts *v.* Union Traction Co., 75 W. Va. 212, 214, 83 S. E. 918; Sample *v.* Consolidated Light, etc., Co., 50 W. Va. 472, 40 S. E. 597, 694, 57 L. R. A. 186. This is the general rule. 36 Cyc. 1521. But in Galveston City R. R. Co. *v.* Hewitt, 67 Tex. 473, 60 Am. Rep. 32, it was held that a street railroad company is bound to exercise the highest degree of diligence to discover and avoid injuring a young child on its track.

Persons working in a street are held to the exercise of ordinary care to avoid being injured. 36 Cyc. 1529. But there are cases holding that a laborer in the streets is not required to exercise as much care as an ordinary pedestrian. McGrath *v.* Metropolitan Street R. Co., 47 Misc. (N. Y.) 104, 93 N. Y. Supp. 519; O'Connor *v.* Union R. Co., 67 N. Y. App. Div. 99, 73 N. Y. Supp. 606; Dipalo *v.* Third Avenue R. Co., 55 N. Y. App. Div. 566, 67 N. Y. Supp. 421. And it has been held proper to instruct the jury that a laborer working in the street is not charged with the exercise of as high a degree of care as a pedestrian. Graves *v.* Portland R., etc., Co., 66 Ore. 232, 134 Pac. 1, Ann. Cas. 1915B, 500, and cases cited in note on p. 504. The corollary or effect of this ruling is to impose a correspondingly greater duty or burden of care upon the street railroad.

Ordinarily a street car motorman need not stop his car merely because he sees a pedestrian approaching the track, since the man on foot is in a place of safety, with absolute control of his movements and can stop instantly, and it is to be presumed that he will not attempt to cross immediately in front of the car. Roanoke R., etc., Co. *v.* Carroll, 112 Va. 598, 72 S. E. 125. See also 36 Cyc. 1517. However in Virginia Ry. & Power Co. *v.* Meyer, 117 Va. 409, 411, 84 S. E. 742, it was held proper to instruct the jury that "the operator of a street car has no right to assume that no person will attempt to cross the tracks in view of a car, and he must use ordinary care to attempt to check its speed as soon as he sees, or ought to have seen, that a person is about to cross in dangerous proximity to his car," and a judgment for the plaintiff was affirmed. And it has recently been held that it is the duty of a motorman to anticipate that a pedestrian will attempt to cross the track where he is approaching it apparently oblivious to the street car and the surrounding circumstances, and the railroad company is liable for the motorman's failure to have his car under control so as to prevent the collision, the latter's negligence being regarded as the proximate cause of the collision. Long *v.* Toronto Railway Co., 50 Can. Sup. Ct. 224, Ann. Cas. 1915A, 203. See also 36 Cyc. 1517.

Between street crossings a street railroad company has a superior right over that part of the streets occupied by its tracks for the reason that it cannot go outside of or beyond its tracks. Memphis Street Railway *v.* Hudson, 7 Tenn. App. 142; State *v.* Foley, 31 Iowa 527; Adolph *v.* Central Park, etc., R. R. Co., 65 N. Y. 554, 76 N. Y. 530. See also 36 Cyc. 1490.

At street crossings the rights of the parties are equal and a street railroad company has no superior right to pedestrians or other occupants of the highway at such points. Memphis Street Railway *v.*

Hudson, 7 Tenn. App. 142; Buhrens *v.* Dry Dock, etc., R. Co., 53 Hun. (N. Y.) 571. See also 36 Cyc. 1495. It is essential, however, to the application of this rule that there is a true crossing and not merely an alley intersection. Thus in Memphis Street Railway *v.* Hudson, 7 Tenn. App. 142, the court held that the rule of equality of right to use street intersections or crossings recognized as existing as between street car companies upon the one hand and pedestrians and vehicle users upon the other, had no application to an intersection of a well recognized street and a narrow alley in a city, at which points the rights of street car companies are superior. In either case the right is frequently given or regulated by statute or ordinance and it has been held that the street railroad company has the right of way even at crossings. Little Rock R., etc., Co. *v.* Sledge, 108 Ark. 95, 158 S. W. 1096, Ann. Cas. 1915B, 682, and cases cited in opinion.

The general rule as to street cars and vehicles at street crossings is that neither has any superior right to the other, but that each must exercise ordinary care in crossing, and the preferential right usually accorded to street cars between crossings does not apply in such case. Moore *v.* Rochester R. Co., 204 N. Y. 309, 97 N. E. 714, 49 L. R. A. (N. S.) 505, and numerous cases cited in note.

The duty of a street railroad company to a passenger is greater than that owed to a pedestrian. For example it is not negligence for a motorman to continue the progress of his car around a curve when he sees an adult person standing near the track but in a position to be struck by the overhang of the rear end of the car, on the theory that he is justified in presuming that such person, in the apparent possession of his faculties and with knowledge of the approaching car and the existence of the curve, will step back far enough to avoid being struck by the car. Miller *v.* Public Service R. Co., 86 N. J. L. 631, 92 Atl. 343, L. R. A. 1915C, 604, and note. The contrary is true in the case of a passenger discharged from the forward end of a car on a curve. The street car company is bound in such case to either delay the car until the passenger is out of danger or to warn him in some manner, and the passenger is not negligent in failing to move more than a couple steps from the car, so that he is struck by the overhang as it rounds the curve, where he was not notified of the danger. White *v.* Connecticut Co., 88 Conn. 614, 92 Atl. 411, L. R. A. 1915C, 609, and note.

The traveler's duty to look and listen has given rise to a great divergence of opinion among the authorities on the question of contributory negligence. It is universally admitted that "it is the duty of a person about to cross a street railway track to exercise ordinary care and diligence according to the circumstances to look and listen for approaching cars in time to avoid an accident, and if he sees an approaching car in close proximity to stop until it passes." 36 Cyc. 1537. The duty to stop exists in most states as to steam railroad crossings, though not in Virginia. In the case of street railroads the duty to stop is rarely discussed in the cases because it arises only upon perceiving the danger after looking and listening. It is on the effect of failure to look and listen that the authorities divide.

What is believed to be the better view is thus stated in 36 Cyc. 1539: "The duty to look and listen is not an absolute duty, and it is not negligence per se to fail to look and listen for an approach-

ing car before crossing; but such failure is negligence only when the situation and surrounding circumstances are such that a person of ordinary prudence would have looked and listened."

Virginia has adopted this rule and holds that contributory negligence in failing to look and listen is ordinarily a question for the jury. In addition to the principal case, see Portsmouth, etc., R. Co. *v.* Peed, 102 Va. 663, 47 S. E. 850; Bass *v.* Norfolk, etc., Co., 100 Va. 6, 40 S. E. 100.

West Virginia has adopted the contrary view, holding that failure to look and listen is contributory negligence as a matter of law. Riedel *v.* Wheeling Traction Co., 63 W. Va. 522, 61 S. E. 821, 16 L. R. A. (N. S.) 1123.

The weight of authority by jurisdictions is that contributory negligence in such case is a question of fact and not of law. See excellent note to Little Rock R., etc., Co. *v.* Sledge, 108 Ark. 95, 158 S. W. 1096, Ann. Cas. 1915B, 682, and exhaustive citation of authorities on p. 690 et seq.

The reasons for the rule, that a traveler crossing the track of a street railroad at a street crossing in a city is not held to the same degree of care in looking and listening as in the case of a steam railroad crossing, are well stated in Bass' Adm'r *v.* Norfolk Ry. & Light Co., 100 Va. 1, 40 S E. 100, 101: "The cases are quite different. In the first place, the cars of a street railway have not the same right to the use of the tracks over which they travel. The steam railroad is itself a highway, and the company has a property interest in and to its right of way (with us, usually the fee), even where the public have an easement for highway purposes over the same land. A street railway is not a highway. A street railway has no property interest in the street. It has the mere right to use it in common with the public generally. * * * An ordinary railroad company acquires by purchase or condemnation a right to run its tracks over the lands crossed by the highway, and so burdens it with an additional servitude. By legislative authority it uses the right thus acquired in the passage of trains at great speed, and to a certain extent, and from the very necessity of the case, the public easement is at such crossing modified. A street railway company not only has no property interest in the street, but it has no authority or right to run its cars at a rate of speed which will interfere with the customary use of the street by others of the public with safety. Its cars do not (at least they have no right at street crossings to) run at the same high rate of speed as the ordinary railroad trains. Their running is not attended with the same degree of danger, and they can be much more quickly stopped than the trains of an ordinary railroad."

As to travelers in vehicles the same rules as in the case of contributory negligence by pedestrians are in general applicable. 36 Cyc. 1554. In Virginia the court shows a disposition to exact a higher degree of care of automobile drivers than of drivers of horse-drawn vehicles. See Washington & O. D. Ry. Co. *v.* Zell, 118 Va. 692, 88 S. E. 305 (a steam railroad crossing case).

Under the last clear chance doctrine cases will be found in nearly all states allowing a recovery. 36 Cyc. 1565 et seq. See also Virginia Ry. & Power Co. *v.* Meyer, 117 Va. 409, 84 S. E. 742; Long *v.* Toronto Ry. Co., 50 Can. Sup. Ct. 224, Ann. Cas. 1915A, 203.

In cases of wilful or wanton injury a recovery is also allowed. See 36 Cyc. 1588. A street railroad company is always responsible for

a collision which could have been avoided by its servants. Its superior right of way cannot be used as a cloak for reckless operation or willful infliction of injuries. Thus in Railway & Light Co. *v.* Deakins, 3 Tenn. App. 28, it was held that a street railway company whose motorman negligently and recklessly ran his car against an occupied vehicle crossing a viaduct along the track in front of him and in plain view was liable in damages for injuries to the occupants from the collision, and contributory negligence could not be relied upon as a defense, the motorman's gross negligence or willfulness being regarded as the proximate cause of the accident.

The decision in the principal case seems to have been largely influenced by the fact that the plaintiff was crossing in the middle of a block and not at a street crossing. The opinion cited several decisions from New York, which jurisdiction has adopted the view that failure to look and listen is negligence per se. See cases cited in note in Ann. Cas. 1915B, 694. As a matter of common sense and common knowledge, as well as a legal proposition, a street car is under control and operated more slowly at street crossings than elsewhere because of the increased danger of accidents, and it is well known that in cities the more important and crowded street crossings are, by rule of the railroad companies, designated as "regular" stops, i. e., a dead stop is required to be made at such points regardless of whether any passengers are to be taken on or set down before crossing the street intersection. The decision seems clearly correct.

C. E. S., Jr.

Keister's Adm'r v. Keister's Ex'rs.

June 13, 1918.

[96 S. E. 315.]

1. Action (§ 1*)—Essentials.—A right of action at law can in no case exist unless the plaintiff at the time the alleged cause of action arose had a substantive civil right, the invasion of which gave rise to a cause of action, and there was a remedy by action at law.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 124.]

2. Statutes (§ 222*)—Construction—Common Law.—Unless the purpose of a statute to change the common law appears by express language, or by necessary implication from such language, the common law will be held to remain unchanged.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 764.]

3. Husband and Wife (§ 205 (2)*)—Suits against Husband— Unmarried."—Under Code 1904, § 2286a (Acts 1899-1900, c. 1139), providing that a married woman may contract and be contracted with, sue in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by her shall have accrued before or after the passage of this act, a wife cannot

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.